Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1998

KERNEY FLOWERS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI
with Appendix

*SUZANNA KOSTOVSKI
S. ALLEN EARLY & ASSOCIATES
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Counsel of Record

December 28, 1998

LEGAL ADVANTAGE * 432 Walnut Street * Cincinnati, OH 45202
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QUESTION PRESENTED

I.

Does this Court have jurisdiction to remand to the district court for authentication and carbon-dating of two applications and affidavits in support of search warrants and the search warrants where the applications and affidavits which were initially produced to Petitioner are without valid signatures and appear to be different from the applications and affidavits which were later produced?

PARTIES TO THE PROCEEDINGS

The parties to this proceedings are: (1) United States who was the Plaintiff in the district court criminal action, Respondent in the section 2255 proceedings, and Appellee in the Court of Appeals, and (2) Kerney Flowers who was the Defendant in the district court criminal action, Petitioner in the section 2255 proceedings, and Appellant in the Court of Appeals.

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NO.

In The
Supreme Court of the United States
October Term 1998

KERNEY FLOWERS,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner Kerney Flowers respectfully prays that a Writ of Certiorari be issued to review the Order of the United States Court of Appeals for the Sixth Circuit entered in this proceeding denying Petitioner's application for a certificate of appealability with respect to the warrants issue brought pursuant to

Petitioner's first § 2255 motion under 28 U.S.C. § 2255. Certiorari is requested to resolve the mystery of why the applications and affidavits in support of two warrants that were issued in 1993 do not appear to be the same documents that were produced 5 years later in 1998.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Sixth Circuit (denying in part Petitioner's application for a certificate of appealability) that gives rise to this Petition is not published and is reprinted at A1. The Order Dismissing Petition for Habeas Corpus and Judgment of Dismissal by the District Court are reprinted at B1 and C1, respectively. The District Court Order Denying Certificate of Appealability is reprinted at D1.

JURISDICTION

The Order of the Sixth Circuit denying in part Petitioner's application for a certificate of appealability was entered on September 28, 1998. Pursuant to 28 U.S.C. § 2101(c) and Rule 13.3, Supreme Court Rules, this Petition for Certiorari has been filed within 90 days of the date of denial of the certificate. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND COURT RULES INVOLVED

28 U.S.C. § 2253(c)(1) and (2) provide:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

> (A) the final order in a habeas corpus proceedings in which the detention complained of arises out of process issued by State

Court; or

(2) A certificate of appealability may issue under paragraph (1) only if the application has made a substantial showing of the denial of a constitutional right.

———————✦———————

Fed.R.Crim.P. 41(c)(1) states in pertinent part:

(c) Issuance and Contents.

(1) Warrant Upon Affidavit. A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on the affidavit or affidavits sworn to before the federal magistrate judge or state judge and establishing the grounds for issuing the warrant.

STATEMENT OF THE CASE

Petitioner was initially indicted in the Eastern District of Michigan on January 25, 1994 of conspiracy to possess

with intent to distribute and to distribute cocaine (Count I); and possession with intent to distribute cocaine, aiding and abetting (Count II). A Superseding Indictment was filed on May 25, 1994.[1]

Prior to the indictments, on December 29, 1993, two Applications and Affidavits for Search Warrants were submitted by Drug Enforcement Agent ("DEA") Gary Boggs to Magistrate Judge Lynn V. Hooe, Jr. for signatures with respect to the Renssaler and Green Hill addresses.[2] The original search warrants and Affidavits were sealed by Order of the District Court.

---

[1] Count III (use and carrying of firearms during and in relation to a drug trafficking crime, aiding and abetting in violation of 18 U.S.C. § 924(c)(1)) was added as an additional charge.

[2] The 1993 unsigned Application for the Rensselar address is reprinted at E1-E2. The 1993 unsigned Application for the Green Hill address is reprinted at F1-F2. Only the first and last pages are reprinted for purposes of this appeal.

After Petitioner moved to unseal the search warrant file, the District Court ordered that the original search warrant file be unsealed and that portions of the Affidavits be redacted. An Order to that effect was entered on May 31, 1994, the day of the hearing.[3]

In fact, the redactions took place in chambers and were done by Assistant United States Attorney, Joseph Allen (See H1, excerpts from Motion hearing to unseal warrant file). This is very important because during the hearing on Petitioner's Motion to Vacate, which took place some 3 years later, AUSA Allen told the District Court that he was **unable to verify whether the warrants contained valid signatures since he had never seen them** (See I1, excerpts from Motion to Vacate hearing) and yet he was the person who redacted from the originals.

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[3] The Order Granting in Part and Denying in Part Defendant's Motion to Unseal the Warrant File and Adjourning Trial is reprinted at G1.

What is even more bizarre is the mysterious behavior by everyone who was asked about these particular Applications and Affidavits. For example, in December, 1996, Petitioner asked the AUSA to stipulate to an Order to unseal the warrant file so that counsel could verify the existence of proper signatures. The AUSA agreed to sign such a Stipulation, but never followed through even though there were numerous requests to do so.

Thereafter, because the AUSA would not sign the Stipulation, Petitioner filed a Motion on or about February 7, 1997 before the Honorable Gerald Rosen (since he was the judge assigned on the warrant file) seeking to unseal the warrant file so that an examination could be made of their signature pages.[4] On February 27, 1997, Judge Rosen issued an unusual

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[4] It should also be noted that the applications do not indicate a time as to their signing, further raising doubt as to their validity in terms of whether they were signed before or after the searches took place.

decision (reprinted at J1). The Court stated that it would initially review the warrants and affidavits *in camera* in order to verify that they are signed and would then issue a ruling on the Motion. **The ruling never came.**[5]

As such, Petitioner included as part of the issues in the Motion to Vacate the validity of the warrants and affidavits. The District Court ordered the government to produce the signature pages for the warrants and affidavits.[6] On February

---

[5] In fact, the Motion to Unseal the Warrant File was itself sealed by Judge Rosen, raising even more questions as to why that took place.

[6] During the hearing on the Motion to Vacate, there was a long colloquy between the Judge and the AUSA about the warrants. What is of most interest is the AUSA's misrepresentation to the Court that he had never seen the warrants and thus, could not verify whether they had been signed even though 3 years earlier, he personally redacted them during a hearing challenging their validity on the

(continued...)

20, 1998, by cover letter, the United States supplied certified copies of the signature pages which it claimed purported to be the same pages as the 1993 versions.[7]

Upon closer examination, it was discovered that the 1993 unsigned versions are substantially dissimilar with the 1998 signed versions. One can only wonder why. Examples of the discrepancies are as follows:

A. Rensselar Drive

1. The 1998 version contains Judge Rosen's stamped name and a stamped case number.

2. There is a file stamp indicating that this Application was filed with Clerk's office on December 29, 1993.

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[6](...continued)
basis of probable cause. *See* H1 of the Appendix.

[7] The 1998 version for Rensselar is reprinted at K1 and the 1998 version for Green Hill is reprinted at L1.

3. In the upper left hand corner, there are the letters "WI."

4. The 1998 copies contain lines running across both on the front of the Application and on the last page (signature page) of the Affidavit in support.

5. The type on the 1993 and 1998 versions does not line up.

None of the foregoing described appears on the 1993 versions.

B. Green Hill

Similarly, the recently produced Green Hill Application is different from the 1993 version.

1. Judge Rosen's stamped name is not in the same spot as in the 1998 version.

2. In the 1993 version, the Judge's name slants upward from left to right. In the 1998 version, it slants upward to the left.

3. The 1998 version has a file stamp that is not present on the 1993 version.

4. There are lines across both the Application and the Affidavit signature pages that are not present on the 1993

version.

5. On the signature page of the 1998 version of the Affidavit, in the bottom right hand corner, there is a notation with the numbers "8-8," which is not found on the 1993 version.

6. The type on the 1993 and 1998 versions does not line up.

If in fact the 1998 versions are duplicates of the 1993 versions but for signatures, they should look exactly alike. However, they do not and that raises a question whether the 1998 versions were just recently signed long after the searches had already taken place and only after Petitioner pressed the issue.[8] It simply makes no sense for

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[8] Petitioner cannot identify any discrepancies regarding the warrants for either property because he was never provided a copy of the warrants either at the time of the searches nor afterwards during his criminal case. Petitioner can say however, that there is no time indicated as to when the warrants were signed vis-a-vis when the searches took

(continued...)

there to be several versions of the same documents, especially warrants.

Petitioner filed a Memorandum with the District Court raising several questions about the validity of these warrants. As a result, the District Court scheduled a conference for examination of the original warrant file. During the conference, the District Court pulled out the originals and saw the signatures on the various documents. As far as the District Court was concerned, that ended the issue of the warrants and issued an Order denying the Motion to Vacate.

REASONS FOR GRANTING THE PETITION

Petitioner is seeking to get at the truth about the authenticity and validity of the warrants at issue. As previously explained, there have been too many questions and not enough answers as to

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[8](...continued)
place, thereby raising yet another basis to question the validity of these warrants.

what really happened with these warrants. It should not have taken the United States nearly 5 years to produce signed copies. The signed copies should mirror the unsigned copies except for the signatures. Instead, the 1993 and 1998 versions appear to be completely different documents.

As this Court is aware, search warrants can only be issued upon a determination of probable cause by a neutral and detached magistrate. *Steagald v. United States*, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981). Within this presupposition is the requirement that before search warrants will be issued, they must be examined by a neutral magistrate prior to any searches taking place.

In this case, after the motion to unseal the original warrant file had been made and partially granted, the Petitioner should have received **signed applications and affidavits** since the original warrant file had been opened in Court and copies were made from that

file. Why that did not take place remains a mystery.

Further complicating this issue is the fact that the copies produced just recently do not resemble the copies that were produced in 1993. There is something clearly wrong with what transpired in this case with these warrants. For example, it took the United States 7 months to answer the § 2255 motion even though the District Court had ordered an answer to be filed within 45 days after the motion was filed. In the answer, the United States challenged the Petitioner's request to view the original warrants for the existence of proper signatures on procedural reasons instead of simply producing signed copies. In other words, the United States made an issue out of the warrants and continued to require the Petitioner to press the issue.

All of this could have been resolved by the AUSA producing signed copies from the outset or at the time the undersigned made a request in December 1996.

Instead, it took several motions and a continued effort by the Petitioner to obtain "signed" copies. Even the signed copies are of a questionable nature and therefore, Petitioner is requesting this Court to grant the instant Petition so that the Court can order the original warrants and affidavits be submitted for authentication and carbon-dating.

CONCLUSION

For the foregoing reasons, this Court should grant this Petition and issue a writ of certiorari remanding to the District Court for an order permitting the Petitioner to carbon-date the signatures on the warrants and affidavits.

SUZANNA KOSTOVSKI
(Counsel of Record)
Attorney for Petitioner
Suite 229
163 Madison
Detroit, MI 48226
(313) 962-2320

Dated: December 28, 1998

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER
DENYING IN PART
CERTIFICATE OF APPEALABILITY

Sixth Circuit Case №. 98-1690
Filed September 28, 1998

Pages A-1 thru A-1

No. 98-1690

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

KERNEY FLOWERS, *Petitioner-Appellant,*	)	
v.	)	**ORDER**
UNITED STATES OF AMERICA, *Respondent-Appellee.*	)	

Before: MARTIN, Chief Judge.

Kerney Flowers appeals a district court decision denying his motion to vacate sentence filed under 28 U.S.C. § 2255. Flowers has requested a certificate of appealability from this court.

Upon review, the application for a certificate of appealability is granted as to Flower's *Ovalle* issue. The certificate of appealability is denied as to all other issues which Flowers has raised.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

ORDER DISMISSING
PETITION FOR *HABEAS CORPUS*

Filed March 25, 1998

Pages B-1 thru B-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NICHIGAN
SOUTHERN DIVISION

KERNEY FLOWERS,
Petitioner,

Civil No. 97-72290

v.

Criminal No. 94-90003

UNITED STATES OF ANERICA,
Respondent.

_____/

ORDER DISMISSING PETITION FOR HABEAS CORPUS

On April 10, 1995, petitioner was sentenced to a custody term of 151 months after he pled guilty to conspiracy to distribute cocaine in violation of 21 U.S.C. § 841(a) and 846. The judgment of conviction was affirmed by the Court of Appeals for the Sixth Circuit in an unreported opinion. See United States v. Kerney Flowers, No. 95-1466, 1996 W.L. 262484 (6th Cir. May 15, 1996).

Now before the Court is a petition for habeas corpus raising issues that (1) were previously raised and adjudicated by the appeal or (2) could have been raised on the appeal. There is no merit to any of the issues raised in the petition as more fully explained in the Combined Brief And Response To Defendant's Motion To Vacate Conviction Pursuant To 28

U.S.C. Section 2255, filed by the government on January 6, 1998. As to the claim of ineffective assistance of counsel, petitioner was represented at his plea and sentencing by experienced and well-regarded counsel. Petitioner on appeal was represented by the same firm of attorneys that is representing him now. Petitioner's papers fall grossly short of meeting the test of Strickland v. Washington, 466 U.S. 668, 686 (1984) ("[C]ounsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."). The petition is DENIED.*

SO ORDERED.

/s/ Avern Cohn

AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: MAR 25 1998
DETRIOT, MICHIGAN

* The Court elaborated on the reasons for dismissal on the record on February 4, 1998.

APPENDIX C

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

JUDGMENT OF DISMISSAL

Filed March 25, 1998

Pages C-1 thru C-1

C-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERNEY FLOWERS,
Petitioner,

-vs-

Crim. No. 94-90003
Civil No. 97-72290

UNITED STATES OF AMERICA,
Respondent.

_____/

JUDGMENT OF DISMISSAL

For reasons stated in the Court's Order entered and filed this date, the petition for writ of habeas corous is DENIED and the above case is DISMISSEDD.

JOHN P. MAYER
CLERK OF THE COURT

By: /s/ J. Cassey
Deputy CLerk

Dated: MAR 25 1998

APPENDIX D

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

ORDER DENYING CERTIFICATE
OF APPEALABILITY

Filed May 28, 1998

Pages D-1 thru D-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERNEY FLOWERS,
Petitioner,

Civil No. 97-72290

v.

Criminal No. 94-90003

UNITED STATES OF AMERICA,
Respondent.

_____/

ORDER DENYING CERTIFICATE OF APPEALABILITY

Petitioner reguests a certificate of appealability to enable him to appeal the Order Dismissing Petition For Habeas Corpus and Judgment Of Dismissal, each entered March 25, 1998, and the Order entered May 11, 1998, denying reconsideration and denying the motion to dismiss the superseding indictment on grounds the Court's jury plan is unconstitutional. See United States v. Ovalle, 136 F.3d 1092 (6th Cir. 1998). There are no grounds for appeal set forth in petitioner's papers. See 28 U.S.C. § 2253(c)(2). The petition for a certificate of appealability is **DENIED**.

A TRUE COPY
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY _____ DEPUTY CLERK

SO ORDERED.

/s/ Avern Cohn

AVERN COHN
UNITED STATES DISTRICT JUDGE

DATED: MAY 28 1998
DETRIOT, MICHIGAN

APPENDIX E

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

UNSIGNED APPLICATION AND
AFFIDAVIT FOR SEARCH WARRANT

Filed December 29, 1993

Pages E-1 thru E-4

AO 106 (Rev. 7/87) Affidavit for Search Warrant ⊕ AUSA OVERMAN 226-3814

United States District Court

EXHIBIT

A

EASTERN DISTRICT OF MICHIGAN S.D.

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
Single Family Apartment/Dwelling
24415 Rensselaer Drive Oak Park, Michigan
Village Green Apartments

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
CASE NUMBER:

E-1

I Special Agent Gary L. Boggs being duly sworn depose and say:
I am a(n) Special Agent of the Drug Enforcement Administration and have reason to believe
Official Title
that ☐ on the person of or ☒ on the property known as (name, description and/or location)
Village Green Apartments number 24415 Rensselaer Drive Oak Park, Michigan. Further described as a two story brick building with beige trim. The number "24415" are affixed to the apartment door.

in the EASTERN DISTRICT OF MICHIGAN S.D.
there is now concealed a certain person or property, namely (describe the person or property to be seized)

SEE ATTACHMENT "A"

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure) property which constitutes evidence of the criminal offense of Conspiracy to Distribute a Controlled Substance, Distribution of a Controlled Substance, Money Laundering and Income Tax Evasion.
concerning a violation of Tile 21 United States code, Section(s) 812, 846, 841 (a)(1), Title 26 USC. The facts to support a finding of Probable Cause are as follows: Sections 7201, Title 18 USC Sections 1956 & 1957

E-2

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof ☒ Yes ☐ No

E-3

Signature of Affiant

Sworn to before me, and subscribed in my presence

December 29, 1993 at Detroit, Michigan

Date City and State

Lynn V. Hooe US MAGISTRATE JUDGE

Name and Title of Judicial Officer

Signature of Judicial Officer

premise is currently storing controlled substances, to wit cocaine, drug related assets/proceeds and drug related documents in violation to Title 21 United States Code, Section 812, 841(a)(1), 846 and 881 (a)(6); Title 26 U.S.C. Section 7201 and Title 18 U.S.C. Sections 981 (a)(1)(C), 1956 (a)(1)(A)&(B) and 1957. Further said premises is storing said controlled substances, to wit cocaine, drug related records, drug proceeds and items used to facilitate a drug conspiracy.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29th day of December, 1993.

Special Agent Gary L. Boggs
United States Drug Enforcement
Administration

Subscribed to and sworn before me this 29th day of December, 1993.

_____

UNITED STATES MAGISTRATE/JUDGE

APPENDIX F

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

UNSIGNED APPLICATION AND
AFFIDAVIT FOR SEARCH WARRANT

Filed December 29, 1993

Pages F-1 thru F-4

AO 106 (Rev. 7/87) Affidavit for Search Warrant ⊕

United States District Court

EASTERN DISTRICT OF MICHIGAN S.D.

EXHIBIT B

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
21140 Green Hill
Green Hill Apartments
Farmington Hills, Michigan

F-1

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 93X75382

I Special Agent Gary L. Boggs being duly sworn depose and say:
I am a(n) Special Agent of the Drug Enforcement Administration and have reason to believe
Official Title
that ☐ on the person of or ☒ on the property known as (name, description and/or location)
21140 Green Hill Green Hill Apartments a two-story brick building located in Farmington Hills, Michigan. The numbers "21140" are affixed to the apartment.

in the EASTERN DISTRICT OF MICHIGAN S.D.
there is now concealed a certain person or property, namely (describe the person or property to be seized)

SEE ATTACHMENT "A"

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure) property which constitutes evidence of the criminal offense of Conspiracy to Distribute a Controlled Substance, Distribution of a Controlled Substance, Money Laundering and Income Tax Evasion.
concerning a violation of Tile 21 United States code, Section(s) 812, 841 (a) (1), 846 . The facts
to support a finding of Probable Cause are as follows: Title 18 USC Sections 1956 & 1957; Title 26 USC Section 7201

SEE ATTACHED AFFIDAVIT

A TRUE COPY
CLERK, U.S. DISTRICT COURT
By _____

Continued on the attached sheet and made a part hereof ☒ Yes ☐ No

_____
Signature of Affiant

F-3

Sworn to before me, and subscribed in my presence

December 29, 1993 at Detroit, Michigan
Date City and State

LYNN V. HOOE US MAGISTRATE JUDGE LYNN V. HOOE, JR.
Name and Title of Judicial Officer Signature of Judicial Officer

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29th day of December, 1993.

Special Agent Gary L. Boggs
United States Drug Enforcement
Administration

Subscribed to and sworn before me this 29th day of December, 1993.

UNITED STATES MAGISTRATE/JUDGE

APPENDIX G

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

ORDER GRANTING IN PART
DEFENDANT'S MOTION TO UNSEAL
THE WARRANT FILE AND ADJOURNING TRIAL

Filed May 31, 1994

Pages G-1 thru G-2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

C.A. No. 94-CR-90003-AA

HON. GEORGE La PLATA

vs.

KERNEY FLOWERS,
Defendant.

_/

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO UNSEAL THE WARRANT FILE AND ADJOURNING TRIAL

For the reasons stated on the record on May 31, 1994, this Court GRANTS in part and DENIES in part defendant's motion to unseal search warrant file No. 93x75382. Accordingly, the search warrant for 24415 Rensselaer Drive and a REDACTED version of the affidavit in support were disclosed to defense counsel at the hearing. Because defendant wishes to file a motion to suppress evidence seized from the Rensselaer apartment, trial is adjourned from May 31, 1994 and defendant may file a motion to suppress no later than Wednesday, June 2, 1994.

Trial shall commence June 6, 1994, at 8:30 a.m. Accordingly, the period from May 31, 1994 through June 6, 1994, is deemed excludable delay pursuant to 18 U.S.C. §3161(h) (8) (B) (iv).

/s/ George La Plata
George La Plata
U.S. District Judge

May 31, 1994
Ann Arbor, MI

APPENDIX H

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

TRANSCRIPT OF DEFENDANT'S
MOTION TO UNSEAL SEARCH WARRANT

Filed August 6, 1998

Pages H-1 thru H-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA Plaintiff	)
-vs-	) CAUSE NO. 94-CR-90003-AA) Ann Arbor, Michigan) May 31, 1994
KERNEY FLOWERS, Defendant	)

Before the

HONORABLE GEORGE LA PLATA

DEFENDANT'S MOTION TO UNSEAL SEARCH WARRANT

APPEARANCES:
For the Government: MR. JOSEPH J. ALLEN, ESQ.,

For the Defendant: MR. CORNELIUS PITTS, ESQ.,

Court Reporter: Sandra A. Prainito
200 East Liberty
Ann Arbor, Michigan 48104

PROCEEDINGS TAKEN BY MACHINE SHORTHAND

Sandra A. Prainito, RMR
Official Court Reporter

MR. ALLEN: In addition, Your Honor, as The Court indicated on the record before, the affidavit that has been disclosed to Mr. Pitts contains some redactions. We discussed that in chambers, Mr. Pitts, The Court and myself. As I understand it, Mr. Pitts does not have an objection to the redaction, since The Court has looked at them and they don't appear to go to probable cause. Is that accurate?

MR. PITTS: That's an accurate statement, but I think what we ought to have the record explicitly clear about, to reflect is that indeed I object to the redacting as it exists as a general principle, but I accept it as it's provided.

THE COURT: Very good.

MR. ALLEN: Just for the record, Your Honor, it's indicated in the government's motion in response to the original motion to unseal, that the issues it had sought redaction of dealt with the identity of unindicted co-conspirators and with informants.

THE COURT:Right. Okay. Very good. Okay then, counsel, we'll expect to see you Monday.

(Off the record at about 10:36 a.m.)

I certify that the foregoing is a correct transcript from the recorded proceedings in the above-entitled matter.

_____ August 6, 1998

Sandra A. Prainito, RMR Date

Official Court Reporter

APPENDIX I

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

TRANSCRIPT OF
MOTION TO VACATE

Filed July 22, 1998

Pages I-1 thru I-5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KERNEY FLOWERS,
Petitioner,

HONORABLE AVERN COHN

V.

No. 97-CV-72290

UNITED STATES OF AMERICA,
Respondent.

_____/

MOTION TO VACATE

Wednesday, February 4, 1998

- - -

Suzanna Kostovski
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Attorney for Petitioner

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(313) 226-9100
Attorney for Respondent

- - -

Sheri K. Ward, RPR, Court Reporter
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 219
Detroit, Michigan 48226
(313) 965-4401

Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

affidavits and I requested copies from Mr. Allen regarding that issue. He indicated to me that he would stipulate to an order to have me look at the signature pages. That was never done. I subsequently requested --

THE COURT: Did you follow up with Mr. Allen and ask him to make good his commitment to allow you to look at the signature pages?

MS. KOSTOVSKI: Oh, yes, Your Honor.

THE COURT: And he refused?

MS. KOSTOVSKI: He did not respond at all.

THE COURT: Just like that?

MS. KOSTOVSKI: Yes, sir.

THE COURT: Did you come to me and ask me for relief and say get Mr. Allen on the telephone and see why Mr. Allen did not respond?

MS. KOSTOVSKI: No, Your Honor, I didn't do that.

THE COURT: Did you not respond?

MR. ALLEN: Your Honor, when I received the request, I said fine, file a stipulation. I thought that was the end of story. I later received --

THE COURT: Would you like to see -- are
the originals signed, Mr. Allen?

MR. ALLEN: I have never seen them.

THE COURT: Would you like to show them to her?

MR. ALLEN: I could get them.

THE COURT: You have no problem with allowing her to see them?

MS. KOSTOVSKI: That's all I'm asking for.

MR. ALLEN: Judge, the only -- it's limited to the signature page. There are other issues in the warrant.

THE COURT: She's seen the warrant sanitized, has she not?

MS. KOSTOVSKI: Yes.

THE COURT: All she wants to do is see the signature pages.

MR. ALLEN: I don't have any problem with it, Your Honor.

THE COURT: Okay. You make the necessary arrangements voluntarily.

MR. ALLEN: I believe, Your Honor, that Judge Rosen has the file. I have checked the court file.

THE COURT: He has the file?

MR. ALLEN: There was a motion filed with Judge Rosen. Judge Rosen said he would look for the signature page.

THE COURT: Who filed a motion in front of Judge Rosen?

MS. KOSTOVSKI: I did, Your Honor, because he was the judge on the original case.

THE COURT: Mr. Allen, would you be good enough at the request of the Court to obtain the file from Judge Rosen?

MR. ALLEN: No problem.

THE COURT: What?

MR. ALLEN: And get the signature page, no problem.

THE COURT: And make copies of the signature pages and send them to counsel?

MR. ALLEN: No problem, Your Honor.

THE COURT: Before we close the record?

MR. ALLEN: Yes.

THE COURT: So we have now solved that problem. That's without prejudice to the government's right to say it's irrelevant in view of the guilty plea.

MR. ALLEN: I have no problem with it, Your Honor.

THE COURT: I know you don't. You know they are signed. Why argue about it?

What else?

MS. KOSTOVSKI: Your Honor, may I have a date by when Mr. Allen will comply?

THE COURT: He'll do it within 30 days.

MR. ALLEN: I'll go down there this afternoon. If Ms. Fischer is in, I think I can get it done this afternoon.

THE COURT: Well, if the file is with Judge Rosen, you will never go down because you have to go up. His chambers are on the eighth floor, Mr. Allen. Maybe that's the problem; you have been looking down when you should have been looking up.

MS. KOSTOVSKI: Well, Your Honor, if you would like, I will address the balance of the issues in the 2255.

THE COURT: What are the other issues?

MS. KOSTOVSKI: Well, it's our position that Mr. Flowers' plea was not voluntarily entered into.

THE COURT: Why?

MS. KOSTOVSKI: Because at the time the plea was taken the Court did not rehearse the elements of the offense to which he pleaded.

APPENDIX J

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

ORDER REGARDING DEFENDANT'S
MOTION TO UNSEAL SEARCH WARRANTS

Filed February 27, 1997

Pages J-1 thru J-3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In the Matter of the Searches of:

140 Green Hill
Green Hill Apartments
Farmington Hills, MI No. 93-X-75382-DT

and Hon. Gerald E. Rosen

Single Family Apartment/Dwelling
Village Green Apartments
24415 Rensselaer Drive Oak Park, Ml

_____/

UNITED STATES OF AMERICA,
Plaintiff, No. 94-CR-80003-01
vs.
KERNEY FLOWERS,
Defendant.

_____/

ORDER REGARDING DEFENDANT'S MOTION TO UNSEAL ORIGINAL SEARCH WARRANTS

At a session of said Court, held in the U.S. Courthouse Detroit, Michigan on **FEB 27 1997**

PRESENT: Honorable Gerald B. Rosen
United States District Judge

Defendant Kerney Flowers, thorough counsel, has filed a Motion to Unseal Original Search Warrants for the purpose of ascertaining whether grounds exist for him to file a §2255 Motion. Defendant

has in his possession "true copies" of the subject sealed search warrants and affidavits which have the name of the issuing magistrate judge, U.S. Magistrate Judge Lynn V. Hooe, stamped on the signature line. Defendant maintains that he needs to review the signature pages of the original search warrants and affidavits to determine whether the originals were actually signed by the magistrate judge because, he claims, if they were not, the search warrants were invalid and he has grounds for a § 2255 motion to vacate or set aside his conviction.

The Court notes that the copies of the search warrants and affidavits attached to Defendant's Motion are each stamped "True Copy". This creates a presumption that the originals were, in fact, signed by the judicial official whose name is stamped on the copies. However, in order to verify that the warrants and affidavits, in fact, are signed, the Court will unseal and review the warrants and affidavits in camera. The Court will withhold ruling on Defendant's Motion until after it completes said in camera review.

SO ORDERED.

/s/ Gerald E. Rosen
Gerald E. Rosen
United States District Judge

A TRUE COPY
CLERK, U.S. DISTRICT COURT
DEPUTY CLERK

APPENDIX K

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

SIGNED APPLICATION AND
AFFIDAVIT FOR SEARCH WARRANT

Filed December 29, 1993

Pages K-1 thru K-5

AO 106 (Rev. 7/87) Affidavit for Search Warrant ⊕

United States District Court

~~EASTERN~~ ~~DISTRICT OF~~ ~~MICHIGAN S.D.~~

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
Single Family Apartment/Dwelling
24415 Rensselaer Drive Oak Park, Michigan
Village Green Apartments

K-1

GERALD ...

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER: 92[illegible]382

I Special Agent Gary L. Boggs being duly sworn depose and say:
I am a(n) Special Agent of the Drug Enforcement Administration and have reason to believe
Official Title
that ☐ on the person of or ☒ on the property known as (name, description and/or location)
Village Green Apartments number 24415 Rensselaer Drive Oak Park, Michigan. Further described as a two story brick building with beige trim. The number "24415" are affixed to the apartment door.

in the EASTERN DISTRICT OF MICHIGAN S.D.
there is now concealed a certain person or property, namely (describe the person or property to be seized)

SEE ATTACHMENT "A"

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)
property which constitutes evidence of the criminal offense of Conspiracy to Distribute a Controlled Substance, Distribution of a Controlled Substance, Money Laundering and Income Tax Evasion.
concerning a violation of Tile 21 United States code, Section(s) 812, 846, 841 (a)(1), Title 26 USC. The facts to support a finding of Probable Cause are as follows: Sections 7201, Title 18 USC Sections 1956 & 1957

SEE ATTACHED AFFIDAVIT

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY: Mary Jo Bardelle Deputy

Continued on the attached sheet and made a part hereof.

FILE

DEC 29 1993

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

XX Yes ☐ No

/s/ S. L. Boggs
Signature of Affiant

Sworn to before me, and subscribed in my presence
December 29, 1993 at
Date

Detroit, Michigan
City and State

LYNN V. HOOE US MAGISTRATE JUDGE
Name and Title of Judicial Officer

/s/ Lynn V. Hooe
Signature of Judicial Officer

K-3

BEST AVAILABLE COPY

premise is currently storing controlled substances, to wit cocaine, drug related assets/proceeds and drug related documents in violation to Title 21 United States Code, Section 812, 841(a)(1), 846 and 881 (a)(6); Title 26 U.S.C. Section 7201 and Title 18 U.S.C. Sections 981 (a)(1)(C), 1956 (a)(1)(A)&(B) and 1957. Further said premises is storing said controlled substances, to wit cocaine, drug related records, drug proceeds and items used to facilitate a drug conspiracy.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29th day of December, 1993.

K-4

/s/ Gary L. Boggs
Special Agent Gary L. Boggs
United States Drug Enforcement
Administration

Subscribed to and sworn before me this 29th day of December, 1993.

/s/ Lynn V. Hooe
UNITED STATES MAGISTRATE/JUDGE

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
By: Deputy

K-5

APPENDIX L

UNITED STATES COURT OF APPEALS
EASTERN DISTRICT OF MICHIGAN

SIGNED APPLICATION AND
AFFIDAVIT FOR SEARCH WARRANT

Filed December 29, 1993

Pages L-1 thru L-5

AO 106 (Rev. 7/87) Affidavit for Search Warrant ⊕

United States District Court

EASTERN DISTRICT OF MICHIGAN S.D.

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
21140 Green Hill
Green Hill Apartments
Farmington Hills, Michigan

L-1

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT
CASE NUMBER: 93X75382

I Special Agent Gary L. Boggs being duly sworn depose and say:
I am a(n) Special Agent of the Drug Enforcement Administration and have reason to believe
Official Title
that ☐ on the person of or ☒ on the property known as (name, description and/or location)
21140 Green Hill Green Hill Apartments a two-story brick building located in Farmington Hills, Michigan. The numbers "21140" are affixed to the apartment.

in the EASTERN DISTRICT OF MICHIGAN S.D.
there is now concealed a certain person or property, namely (describe the person or property to be seized)

SEE ATTACHMENT "A"

which is (state one or more bases for search and seizure set forth under Rule 41(b) of the Federal Rules of Criminal Procedure)
property which constitutes evidence of the criminal offense of Conspiracy to Distribute a Controlled Substance, Distribution of a Controlled Substance, Money Laundering and Income Tax Evasion.
concerning a violation of Tile 21 United States code, Section(s) 812, 841 (a) (1), 846 . The facts
to support a finding of Probable Cause are as follows: Title 18 USC Sections 1956 & 1957; Title 26 USC Section 7201

L-2

SEE ATTACHED AFFIDAVIT

I hereby certify that the foregoing is a true copy of the original on file in this Office.
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY _____ Deputy

FILE
DEC 29 1993
CLERK'S OFFICE
U.S. DISTRICT COURT
DETROIT

Continued on the attached sheet and made a part hereof ☒ Yes ☐ No

L-3

/s/ S. L. Boggs
Signature of Affiant

Sworn to before me, and subscribed in my presence
December 29, 1993 at Detroit, Michigan
Date City and State

LYNN V. HOOE US MAGISTRATE JUDGE
Name and Title of Judicial Officer

/s/ Lynn V. Hooe
Signature of Judicial Officer

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 29th day of December, 1993.

/s/ Gary L. Boggs
Special Agent Gary L. Boggs
United States Drug Enforcement
Administration

L-4

Subscribed to and sworn before me this 29th day
of December, 1993.

/s/ Lynn V. Hooe
UNITED STATES MAGISTRATE/JUDGE

